



## October 2004 Edition

### Acquisition Update

#### *Evaluations:*

Cost and technical evaluations are well underway. Five cost proposals were received by the September 3, 2004, deadline. Prior to the start of the cost evaluations, a compliance check was accomplished to ensure that each proposal met the overall requirements of the solicitation.

#### *Contests:*

On July 19, 2004, the President of the National Association of Air Traffic Specialists (NAATS), Wally Pike, submitted a contest on the AFSS Public-Private Competition to the Office of Dispute Resolution for Acquisition (ODRA). ODRA handles all bid contests and contract disputes arising out of procurements and contracts entered into under the Federal Aviation Administration's (FAA) Acquisition Management System (AMS).

This contest was settled on September 3, 2004. The full text of the settlement agreement can be viewed at: <http://www.faa.gov/aca/afss/files/ODRA/NAATS/SETTLEMENT%20AGREEMENT.pdf>.

Key points of the settlement are:

**Wage Determination:** The McNamara-O'Hara Service Contract Act of 1965 (SCA) requires that contracts over \$2,500 contain wage determinations issued by the Department of Labor (DOL) that specify the minimum monetary wages and fringe benefits that must be paid to the various classes of workers who perform work on the contract. The DOL Wage and Hour Division makes these determinations based upon rates prevailing in the locality where the work is to be performed.

The Office of Competitive Sourcing complied with this requirement by submitting requests for wage determinations on Air Traffic Specialist (Station) services in all 58 localities included in the competition. Access to this information was provided to Potential Service Providers (PSPs) in the solicitation. However, since the Office of Competitive Sourcing's internal research revealed that these rates were lower than what the majority of affected employees were currently being paid, the FAA instructed PSPs in Section M.3.5.1 of the solicitation that:

“A PSP may propose any labor mix and associated labor rates that it deems to be appropriate for the scope of work to be performed. **The Government will assess the realism of the proposed labor mix and rates using the incumbent wage rate for a Full Performance Level (FPL) 2152 – AFSS Specialist, which is equivalent to a General Schedule (GS) 12 Step 5 plus GS locality pay, and not the current Department of Labor (DOL) approved Service Contract Act (SCA) rates.** PSPs shall include a strategy in their Staffing Plan that addresses any risks, including employee recruiting and retention, associated with their proposed labor mix and rates”.

As part of the settlement the agency agreed to go back to the DOL and request a new wage determination.

**Update:** On September 28, 2004, the Office of Competitive Sourcing provided the DOL with an information package, including data from NAATS, to consider in its review of the wage determination. Additionally, the Assistant Administrator, Human Resource Management has had an initial discussion with representatives from DOL to discuss the disparity in the current wage determination and actual pay of AFSS personnel.

**Performance Decision:** The settlement includes an agreement not to make a performance decision prior to January 1, 2005.

**Future Contests:** All 24 issues of the 'contest' are withdrawn with prejudice. This means that in the future, Mr. Pike cannot raise any of these issues or any issues (known or unknown) that could have arisen prior to the date of the settlement.

### ***Operational Capability Assessments:***

Operational Capability Assessments (OCAs) are scheduled with each of the PSPs. These meetings will give the PSPs the opportunity to discuss, substantiate, or clarify their proposals and provide a holistic picture of their service concepts. The OCAs will not be evaluated separately but could positively or negatively impact the evaluation of a proposal based on the information received during the meeting.

## **Managers Conference**

The Flight Services Service Unit held an AFSS Managers Conference on September 21-22, 2004, in Baltimore, MD. Agency leaders that addressed conference attendees included: Marion Blakey (FAA Administrator), Bobby Sturgell (FAA Deputy Administrator), Russ Chew (FAA Chief Operating Officer), Jim Washington (Vice President Flight Services), Dennis DeGaetano (Vice President Acquisition and Business Services), and Ventris Gibson (Assistant Administrator, Human Resource Management).

Dennis DeGaetano discussed the status of the acquisition side of the AFSS A-76 competition. His remarks included a discussion of the timeline (accessible at <http://www.faa.gov/aca/afss/timeline.htm>), contests to the competition and ODRA, the evaluation process, and his role at the Source Selection Authority (SSA). During an extensive questions and answer period Mr. DeGaetano discussed ethics and the integrity of the process, as well as how the contract will be funded.

## **VOICE*Live* Webcasts**

Administrator Marion Blakey and COO Russ Chew were recently interviewed by Gerald Lavey for VOICE*Live*. The subject of Ms. Blakey's interview was specifically A-76. The conversation with Mr. Chew included a brief discussion of the AFSS competition. Both interviews can be accessed at [http://videoontheweb.faa.gov/Voice\\_Live.htm](http://videoontheweb.faa.gov/Voice_Live.htm).

## **Highlighted Recently Asked Questions**

***If the contract award is to other than Most Efficient Organization (MEO) will Flight Service Data Processing System (FSDPS) Automation Specialists (AUSs) be needed beyond the award date to keep the equipment running at Model One Full Capacity (M1FC) FSDPS locations?***

That will be determined by the vendors' proposals. M1FC has been offered as government furnished equipment. Each PSP will decide whether it will utilize the M1FC system. If a PSP chooses to use M1FC and identifies the need for AUSs to run/maintain the system, the Right of First Refusal for these jobs will be extended to qualified personnel. There is no requirement for any vendor (including the MEO) to utilize M1FC.

***Are you 100% sure that the AUSs are a part of the A-76 process?***

Yes, 2152 personnel at the FSDPSs are part of the AFSS competition.

***Is there something in writing that clearly indicates that the FSDPS personnel are addressed in the process?***

The personnel identified for inclusion in the competition is based on the Federal Activities Inventory Reform (FAIR) Act. The FSDPS personnel were included with their parent AFSS in the inventory, under code T826F (Flight Service Air Traffic Control).

The inventory can be accessed at <http://www.dot.gov/ost/m60/fairact/index.html#inventory1>. The FAA CY02 inventory is included in the Department of Transportation CY02 Commercial and Inherently Governmental full-time equivalent (FTE) Inventory. The function codes are listed as a separate worksheet this inventory. They are also accessible at: [http://www.dot.gov/ost/m60/fairact/DOT\\_CY03\\_Function\\_Code\\_List.xls](http://www.dot.gov/ost/m60/fairact/DOT_CY03_Function_Code_List.xls).

***Will the FAA still be responsible financially for lawsuits brought against the FAA, the Contractor or the contractor pilot weather briefer for settlements/judgments in substandard and/or inadequate Pilot Weather Briefing cases?***

The MEO will be self-insured (the FAA), while all other offerors will need to provide their own liability coverage.



***Why do vendors get to address deficiencies? Why are they not just noted as deficient and evaluated accordingly?***

This is a practice consistent with the AMS, Office of Management and Budget (OMB) Circular A-76 and Sections L and M of the Screening Information Request (SIR).

The purpose of the acquisition process is to ensure that the award is made to the PSP who offers the 'best value' to the government. The ability of each PSP to address the deficiencies in their proposals is one way of ensuring that the right decision is made.

***Why are the vendors allowed to see the MEO proposal? When do they get to see it? Why doesn't the MEO get to see the vendors' proposals?***

In accordance with AMS 3.1.6 Disclosure of Information and 3.1.8 Procurement Integrity Act, the Office of Competitive Sourcing is prohibited, from knowingly disclosing any bid or proposal information or source selection information before the Public Announcement of the Performance Decision; this includes the MEO Proposal (Agency Tender).

Further, in compliance with AMS, after the Public Announcement of the Performance Decision, directly interested parties may file a contest to the FAA. At this time, only legal agents for directly interested parties shall have access to the Standard Competition Form (SCF) and Schedule B of any proposal. Additionally, if requested, the FAA will release the Agency Tender excluding any information that is deemed proprietary by the Agency. Such information is made available to enable any offeror (including the Agency Tender Official) to evaluate whether they have grounds to submit a contest to the Agency.

The FAA shall require as a condition of access, that the legal agent of a directly interested party sign a non-disclosure agreement. The agreement shall provide that a signatory may share the information covered by the agreement only with other signatories, and only for purposes of challenging the performance decision.

Only upon resolution of any contest challenging the performance decision or expiration of the time for filing such a contest, shall portions of the Agency Tender be available to the public. Proprietary information of private sector providers and of sub-contracts included in the Agency Tender shall not be released.

Non-proprietary information from the Agency Tender is generally allowed to be released under the Freedom of

Information Act after all contests to the FAA have been finally resolved. However, common practice in A-76 competitions generally indicates that only a redacted version of the Agency Tender is released to the public.

***Is the AFSS public-private competition an A-76 or an acquisition?***

The competition is being conducted in accordance with A-76, but uses the AMS instead of the Federal Acquisition Regulation (FAR) because Congress has specifically directed that FAA not use the FAR in any of its acquisitions.

***What will be the impact of the Van Hollen amendment if passed?***

The effect pending legislation would have on this competition is unknown. Until the legislation is enacted into law, no one wants to speculate on the final wording and its applicability.

***If a non-government vendor is awarded the contract, can they start the transition phase sooner than the 6 to 9 months. In other words, can they reduce the phase-in time once the contract is awarded?***

The phase-in period will be a minimum of six months, and no service provider can change that. The Agency will determine whether additional time (up to a total of nine months) is necessary.

***As the SSA, Dennis DeGaetano is the deciding official and will receive a recommendation from a group/committee prior to his decision. Who is on that committee and how were they chosen? Is this information on the Office of Competitive Sourcing website?***

The Source Selection Evaluation Board (SSEB) is the group that provides a recommendation to the SSA. The SSA is the competition official with decision-making authority who is responsible for source selection.

The names of those on the teams (Technical and Cost Evaluation Teams [TET, CET] and SSEB), and how they were chosen is procurement-sensitive information and will not be released.

The evaluation process is outlined in Section M.3 of the Screening Information Request (SIR). It is posted on the website at <http://www.faa.gov/aca/afss/documents.htm>, under Competition Documents (RFO DTFAAWA - Full SIR Documentation Incorporating all Amendments). This is a zipped file, once it is opened, select Section M. M.3 outlines the evaluation process.



Current evaluation activities involve the TET and CET. Section M.3.4 outlines the TET process and M.3.5 outlines CET process. This information is provided to the SSEB. The SSEB reviews the proposals and provides a recommendation to the SSA. The SSA makes the final decision.

***Rumor has it that the competition is down to a three horse race. Is this true?***

No, all five PSPs – the MEO, Computer Sciences Corporation, Lockheed Martin, Northrop Grumman, and Raytheon remain in the competition. In fact, no comparative ranking of proposals has taken place. Be careful of information that does not come from an official FAA source. The acquisition office will continue to share as much information as is possible without jeopardizing the competition.